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dt 21/2/1

1954 File No. 706/48

KHYBC DEPARTMENT

~~BRANCH~~ B Class

Subject:— Basis of Standard Scale of Judgement Regarding Karnatak

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23/3 [illegible] RD 1-10 Mar 57

Copies from file No. 706/48 part XXVI

D-41
40

Karnatak

File No. 706
Std. Sport. Slip 24 A

It is nearly six months since I am in charge of this Deptt. I am jotting down some of my impressions about the housing problem in the city of Bombay. The population of the city has nearly doubled since 1941. As against this the building activity was almost at a standstill during the war period and thereafter it has not been able to meet even a portion of the demand. The creation of this Deptt. is expected to serve two purposes-(1) to check the pagdee evil and(2) to allocate accommodation to needy persons within reasonable time. One could say with some confidence that as far as the first point is concerned, this Deptt. has made a good progress but on the second point I must very humbly submit that the Deptt. is not able to touch the fringe of the problem and this is quite natural. If a glance were to be cast at the list of Bombay Govt. servants on the waiting list, a clearer idea could be had. As a matter of fact this class of pepople has been receiving a very liberal treatment. The list of Central Govt. servants on the waiting list is also not quite small. No doubt after a Conference with Hon'ble Mr. Gadgil a decision has been reached that all the Central Govt. servants wanting accommodation should be the responsibility of the Estate Manager, Govt. of India as against allotting him 10 per cent. of the vacancies and further putting the Govt. of India servants' present accommodation at his disposal. This I would at best call passing on responsibility, rather pushing of the responsibility to somebody else's shoulders. But it does not mean that their difficulties are solved. Similarly it is found that a

number of persons belonging to the essential services like the medical profession and other services vitally necessary for the normal city life, muncipal services etc. are not able to find accommodation for themselves and their dependants and therefore it is necessary that the problem is looked at from the point of view of more construction taking place.

No doubt it is true that a Housing Board is being created and already the Housing Comm. is busy constructing premises but that does not seem to satisfactorily solve the problem. It would be necessary for the Muncipal Corporation to take keener interest in the matter. Similarly if is is possible, the investing public also ought to be induced to enter into this business. The Govt. can help such an organisation on the following lines:-

In aid of Investors- (1) Help them to obtain building materials by allotting them proper quotas and assure supply of the same
(2) Give them transport facilities by allocating petrol coupons.
(3) Holding a sort of guarantee about the stability of rents for some reasonable period.

In aid of tenants- Fixing up reasonable rent by not allowing the Investor or the Building Corporation to charge beyond a certain percentage on the investment.

The above suggested as it is thought that

Bombay needs at least another 30,000 tenements at a very conservative estimate and that need be put up within a comparatively short time. This will raise the question of putting into action the Greater Bombay Plan. I do not think I need touch it as it will be a matter between Govt. and the Corporation.

Allowing a person undertaking new construction to choose his allottee does not solve the problem. It reintroduces to a certain extent pagdee in another form. Complaints have been received which cannot be always substantiated though for all practical purposes they appear to be true and in making his choice considerations other than his blood relationship or freindship have weighed with the builder. The only way to bring the builder round is to make him feel that there is a possibility of alternate accommodation being available. It is also true that the builder is at times forced to resort to extra legal means in obtaining the building materials as he is either not allotted the whole quota he needs or gets it in parts or though the allotment is made, he is not able to obtain actual delievery.

Lastly if this deptt. is not merely to be concerned with keeping up the negative aspect of keepingdown the pagdee, the positive line has to be taken and therefore the above suggestions are made. Otherwise if people find that making applications to this deptt. and patiently waiting for one's turn does not ultimately materialise in allotment, naturally applicants are bound to be negative. Strictly speaking, except in a

rey cases an ordinary citizen in the city of Bombay who has applied later than 15th december 1947 does not stand a chance of being allotted any premises by this deptt. in the near futbre, which means applicants who have applied during the last eleven months andwill be applying henceforth may have to wiat indefinitely.

Id/-
15-11

I.P.

I agree with Mr. Kuntay as to 1 and 2.

Will HM Labour and other HMs please note as this and note how in their opinion public may be induced to invest in building. Whatever reform is necessary in legislation may be taken in hand.

P.S.Kuntay
HM(Labour)

All Hms

Id/-
19-11

The problem of providing requisite residential accommodation for the homeless has been engaging the attention of the Housing Organization since its inception about two years back. It has been given considerable thought and a number of steps have been taken to meet the situation as far as possible. A complete solution of the problem with the limited resources at our disposal and the insuperable difficulties with which we have to contend with is not possible in the ne future.

The action taken by the Housing Organization in this connection comes under the "positive line" mentioned by Mr. Kuntay. Details of action thus taken have a ready been given elsewhere and it is not possible to deal with them in this note. These may however be described briefly as under:-

(1) Direct construction of residential buildings including conversion of vacant Military Hutments into residential tenements after reconditioning.

(ii) Assisting private constructions:-

In this connection ~~x~~ action on the following line is being taken.

(a) ~~Exak~~ Developing vacant lands with view to make them fit for construction of residential buildings.

(b) Granting of financial assistance to prospective builders of residential accommodation.

(c) Increasing supplies of essential building materials and making them easily available to prospective builders at reasonable prices and

(d) Cheapening cost of construction by research, pre-fabrication, evolving use of alternative materials etc. etc.

Restricting my remarks to the action taken in Bombay, I may state that the following work has already been carried out:-

(i) Direct construction:-

The Housing Organization has nearly completed 228 permanent type tenements at Worli and approximately 1000 semi-permanent type tenements at Goregaon and Ghatkoper. Further batch of 770 permanent type tenements will shortly be taken in hand in various parts of the City and Suburbs. It is also proposed to build 1000 additional semi-permanent tenements in the City and Suburbs. All this work will be completed by the end of 1950 by which time the Housing Organization will have completed 2000 semi-permanent type tenements. Construction of further 2000 tenements is contemeplated and will probably be taken in hand in 1950-

In addition, the Housing Organization has provided 1500 tenements for residential purposes in various Military Camps at Versova, Sion-

Ltunga, Worli, Bandra etc. by reconditioning and converting the existing Military Hutments. This brings the number of tenements that will be provided by the Housing Organisation to about 7000 which is approximately 25% of the total requirements urgently needed.

(ii) Developing land for construction of residential buildings:-

It is proposed to develop large areas of land at Juhu, Vile Parle, Marol, Goregaon and Chembur with a view to make suitable building plots available to the public for the purpose of construction of residential buildings at reasonable rates. This work has recently been started and some progress has already been made as far as development of land at Juhu is concerned.

(iii) Increasing supplies of essential building materials including their distribution:-

The Housing Organisation has taken over distribution of steel and has put it on an orderly basis. The material is being distributed in accordance with the policy laid down by Government and by making fullest possible use of steel that is being imported as well as by arranging re-rolling of steel from re-rollable defectives and scrap hardship that is being experienced in this connection is being minimised

As far as supply of Cement is concerned, importers are being given every facility to import Cement from foreign countries. Large quantities of Cement have been imported from Pakistan andhave been utilised in meeting essential demands for the material. Imports from other foreign countries are also contemplated Distribution of Cement is being put in proper order with a view to remove complaints from the public and it is hoped that present difficulties that are being experienced inthis connection will shortly disappear.

Production of bricks is being increased and their prices have been fixed with a view to make them available to the public at reasonable rates. Steps have also been taken to increase production of lime andsandwith a view to bring down their prices by increasing availability of the material. Lime is already being produced under this Scheme at Sangli for use at Poona.

Considerable action still remains to be taken in connection with increasing supplies of essential building materials. The question is receiving very careful andconstant attention of theHousing Organization andsuitable steps in this direction are being taken. The supplies of essential buildings materials are continousl on an increase and as the various schemes that are being worked out become effective, the difficulties will gradually become less and les

(iv) Cheapening cost of construction:-

A scheme has already been drawn up by the Housing Organisation for prefabrication of doors and windows from Government timber in

consultation with the local Architects. It is hoped to bring down the price of this item of building construction by about 20% in this manner. The scheme is expected to be very popular with public and is proposed to be extended to other towns in the Province.

The above gives some idea regarding "positive action" taken by the Housing Organization in connection with easing the problem of shortage of residential accommodation in this City.

It has been suggested that the investing public ought to be induced to enter into the business of building construction. In this connection I beg to state that there appears to be some misunderstanding inthis respect. There are in fact more builders than we can cope with. We have not enough building materials for meeting even the present demand. Actually, applications for allotment of steel are not being entertained from prospective builders for last one year. The present supplies of steel are being utilised for meeting demands of the people who applied more than a year back. The position regarding Cement is a little better. Again situation regarding transport is equally bad. We are not able to bring our supplies of timber, Cement, Bricks, lime, sand etc. into Bombay in adequate quantities for limited construction now in progress due to lack of Railway wagons. Thus, if our problem of providing more residential accommodation cannot be solvedat a quicker rate, it is chiefly on account of shortage of building materials and difficulties of transport.

As already pointed out above, as far as shortage of essential building materials is concerned, Housing Organization is doing its utmost to solve it. It may, however, be stated that Bombay has been notoriously short of accommodation even in the past except propably when threre was a threat of Japanese Invasion which led to large scale evacuation. The population of the City has doubled in the last few years. If this increased population has to be properly housed, the residential accommodation will require to be doubled at the very least. It may, however, be added that the actual requirements of additional accommodation will be somewhat more on account of changes in social customs etc. i.e. gradual disintegration of joint families increase in standard of living etc. that have taken place. Assuming however, for the purposes of this note that the additional accommodation now required to be provided is the same as was existing in Bombay before the War, it will take as much time for Bombay to provide this additional accommodation as it took it to build, assuming that the rate of building will be the same as it was before the War. The problem it will please be seen is not an easy one and is not therefore likely to be quick or easy in solution.

In my opinion, the time has now come when Government shouldseriously think of building additional townships where new industries etc. can be located and thus further increase in the population of Bombay can be prevented. The Building Control Order has already been helpful

in stemming theincrease in the numeer of factories etc. in Bombay by banning their construction. Some positive action in this direction is however necessary and this can be done by building new townships with facilities of power, transport, water supply, drainage etc. at suitable sites in the yicinity of Bombay.

As regards diffdoulties which are to be faced by builders mentioned in the note of Mr. Kuntay viz."Builders being forced to resort to extra legal means in obtaining the building materials as he is either not allotted the whole quota he needs or gets it in parts or though the allotment is made, is not able to obtain actual delivery", it may be stated that every care is being exercised to minimise such cases. Care is always taken to see that those who, have been allotted part quota of essential building materials, get the balance supply as soon as their work has sufficiently progressed. Part allotment is being made in order that material may bot lie idle with builders pending progress of their work. Again, requirements of materials are carefully checked and quantity allotted is such that it covers the full requi ments. As far as non-deliver against allotment is concerned, it may be stated that this has been in some cases due to the difficulties of transport or an error in the Permit Office. Action has already been taken to minimise the latter.

Sd/-
Assistnat Housing Commissioner.
(West & Materials), Bombay

ousing Commissioner Id/- 3.11

Elastic conditions about the choice of tenants and building of additional floors may now encourage private building. But buildings must spread out of Bombay City otherwise scarcity of steel and cement will act as a barke. Building may be of brick and limeto. in the suburbs, and this is a type the private builder is not at all keen to undertake; that is a great difficulty. As for prefabricktion, it has yet to be placed, to suit Indias conditions and is likely to be somewhat extensive.

No.12039
dt 3.12.48

No.1893.m
dt 30.11.48

What is holding back the private builders body is not only the dearth of materials of certain type but the apprehension that the value the investment would sink heavily with the fall is prices which may occuer in the course of time, while the restrictions under the Rent Act remain intact.

Sd/-
30-12

sgp/-
11-?

H.M. Industries 6/-4-1

H.M.L.S.G. 6/-11-1

H.M. Agri & Forest 6/-12-1

H.M.P.D. 6/- 13-1

H.M Law & G.S.D. Whether rent act is released for new Buildings no investors will come forward.

H.M.Excise Id/.30-1

H.M. Health & P.W.D. Id/- 29-1

H.M. H.D.& H.D. Id/-31-1

H.M.

The view taken by H.M.(Legal) at page 12 is correct. As suggested by him the Bombay Rents, Hotel and Loding House Rates Control Act, 1947, should be relaxed in the case of new buildings.

2. The expression"standard rent" as defined in section 5(10) means in the case of premises let after 1st September 1940, the rent at which they were first let. But under section11(1)(a) in the case of such premises the Court can fix the standard rent at a lower rate if the rent at which they are so let is in the opinion of the Court exeessive. Section 11, however, does not lay down the factors which should be taken into consideration in fixing standard rent or in arriving at the decision that the amount of rent charged is not excessive. The Chief Judge, Court of Small Cause, Bombay, was requested to state what factors are ordinarily taken into account by his Court in deciding such questions. From the reply of the Chief Judge it appears tha the standard rent of similar premises in the locality and i the case of a newly constructed building, the reasonable return which might be expected by the landlord having regard to the cost of construction, the value of the land and the outgoings andallowances for repairs etc., are taken into consideration by the Court in fixing standard rent. The principles on which standard rent of new building is determined by the Court of Small Causes, Bombay, may be incorporated in section 11. Such provisions are found in sections 2(2)(a)(iv) of the Sind Rent Restriction Act, 1947, section 9 of the West Bengal Premises Rent Control (Temporary provisions) act, 1948, section 8 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, and section 4(2) of the Punjab Urban Rent Restriction Act, 1947.

3. The other matters in respect of which relaxation may be made are:-

(1) the landlord should be entitled to the recovery of possession of a dwelling house if it is reasonably required by him for occupation as a resi-dence for-

(i) himself:

(ii) any son or daughter of his over eighteen years of age; or

(iii) his father or mother, and

2 he landord should be entitled to the recovery of possession if any rent lawfully due from the tenant has not been paid within a ~~ex~~ specified period.

The provisions suggested above are found in the the English Act(vide First Schedule to the Rent and Mortgage Interest Restrictions(Amendment) Act, 1933).

As regards (1) above at present under section 13(1)(g) subject to the provisions of sub-section(2) of that section the landlord is entitled to recover possession from a tenant if the premises are required for occupation by himself or by by any person for whose benefit they are held

As regards(2) above under the English law an order for possession on the ground of non-~~x~~payment of rent may be made even if the tenant has paid the arrears in Court (Brewer Vs. Jacobs,(1923) 1 k. B. 528). Under section 12(3) of the Bombay Act, however, no decree for eviction can be passed i at the hearing of the suit the tenant pays of tenders in Court the rent then due together with the costs of the suit Section12(3) may be suitably modified and a provisionx may be made on the lines of section 3(a) of the U.P.(Temporary) Control of Rent and Eviction Act, 1947, that the landlord shall be entitled to recover possession if the tenant has wilfully failed to make payment to the landlord of any arrears of rent within one month of the service upon him of a notice of demand from the landlord.

Sd/-
Additional Secretary to Government.

No.8484 dt 27th July 1949.

sgp/-
11-7

Section 11(1) of the Rent Act lays down that the Court may fix the standard rent at such amount as, having regard to the provisions of this Act and the circumstances of the case, the Court deems just. It has been left to the discretion of the courts to decide what basis they should adopt in fixing the standard rent andif the Small Causes Court at Bombay is following the procedure mentioned at 'A' on p.13 at..., there would seem to be no need to lay down that procedure in the Act itself. Moreover, it would be inconsistent to provide that the court should fix the standard rent at such amount as, having regard to the provisions of the Act and the circumstances of the case, the court deems just and then to lay down that the court should follow this or that particular procedure. It would be pertinent to note that the City of Bombay Muncipal Act, 1888, does not lay down the basis on which the Bombay Muncipality should fix the rateable values of properties; and if the fixation of rateable values can beleft to the discretion of an executive body like the Bombay Muncipality there would be no harm in leaving it to the courts to decide the basis on which standard rents should be fixed. Section 29 of the Rent Act provides for appeals, and if

any wrong basis have been adopted, they can certainly be corrected in appeal.

It may also be mentioned that in the RentBill which was introduced in the assembly in the 1947 Budget Session, there was provision empowering Government to frame rules prescribing the manner in which the Controller should fix the standard rent Government did not proceed with this bill because it was severly criticised by the public. The provision was deleted from the revised consolidated Bill which was moved in the following session because it was found that it would be impracticable to lay down any basis on which standard rent should be fixed.

It is also difficult to see how the proposed amendment will help to increase building activity. In the case of new buildings, it is open to the landlord to charge any rent he likes and that rent becomes the standard rent until it is refixed by the Court. The tenant gets in only if he agrees to pay the rent demanded by the landlord. The tenant can, of course, get in and then approach the court but the onus of proving that the rent is not reasonable will be on the tenant and not on the landlord. In any case, unless there are complaints that the standard rents fixed by courts are low and unfavourable to the landlords, there would be no need to amend the Ac as proposed, whatever may be the provisions in the Acts of other Provinces.

2. Para 3(1) of Mr. Dhurandhar's note:

There was a similar provision in the Bill which was introduced in February 1947 and the revised consolidated Bill which was moved in the Septemeber 1947 session. It seems there was severe criticism against this provision and the provision was withdrawn before the Bill was finally passed and became the Rent Act of 1947. If the proposed amendment is now to be made, it will be difficult to justify it.

Again it is difficult to see how the proposed amendment will help to increase building activity. The Rent Act does not restrict the right of a landlord to select his tenants. The restrictions are imposed by the Bombay Land Requisition Act. In the case of existing buildings, the proposed amend-ment will act very harshly on the tenants because the landlords would ask for eviction of their tenants on the ground that the premises are required for their sons or daughters etc. if the court grants the eviction certificate, it may mean that a whole family may be thrown on the street to accommodate the son or daughter of the landlord who may have accommodation elsewhere or who could be accommodated by the landlord in his own premises. The amendment is likely to be abused by the landords as it will give them a good handle to harass tenants, and need not be accepted so far as the existing buildings are concerned.

6/8/00

The Rent Act does not restrict the right of the landlord to accommodate in his building any tenants he chooses. The restrictions are placed by the Bombay Land Requisition Act, 1948; but in the case of new buildings the Accommodation office has permitted the landlords to choose their own tenants. If, therefore, a landlord wants to construct a new building with a view to accommodating his father, mother, sons and daughters or even his friends neither the Rent Act nor the Land Requisition Act will stand in his way.

There may be cases where a person who has say two unmarried sons who are staying with him. These sons have no intention of setting up their own homes until they get marries. If such a person builds a house now and his sons continue to stay with him, the landlord will let out the other flats to some person or the other. If after say two or three years, the sons get married and the landlord wants to provide accommodation for them by evicting two of his tenants, the landlord will not be able to do so unless the Rent Act is amended as suggested by Mr. Dhurandhur. But such cases must be few and the argument that landlords are reluctant to build because they are not able to evict tenants to accommodate their own sons and daughters is hardly sound. Evidently, the porposed amendment will not promote building activity. It will only result in hardship

3. Para 3(2) of Mr.Dhurandhar's note:-

Under the present procedure for recovery of arrears of rent, the landlord has to serve a notice on the tenant in writing of the demand of the standard rent or permitted increases and to file a suit against the tenant if the tenant fails to pay the dues within one month. If at the hearing of the suit, the tenant pays or tenders in the court the standard rent or permitted increases the due, together with the costs of the suit, the court cannot pass a decree for eviction. The landlords in Bombay also have the remedy of distress warrants. When the landlord files an eviction proceeding against a tenant because the tenant is in arrears, the landlord's main object is (or should be) to recover his money. The existing provisions of the Act are quite adequate because the landlord will get not only his dues but the cost of the suit and so long as the landlord gets his money, he cannot make it a grievance that the tenant has not been evicted. The proposed amendment need not, therefore, be made. Some Poona landlords had made the same suggestxxion in a representation submitted to Government through the Hon'ble Mr. N.V.Gadgil, Minister for Works, Mines and Power, and the suggestion was negatived by Government. Besides, it is difficult to see how the proposed amendment will help to increase

building activity.

It may also be mentioned that a provision similar to that of section 12 of the Act was made in part III of the Act only during the last session. In view of this, it will not be consistant to amend section 12 now as proposed.

4. As has been explained above, none of the amendments proposed by Mr. Dhurandhar will increase building activity and there would appear to be no justification for making them. If building activity is to be increased, the best curse would seem to be to release building materials freely; but this is a matter with which this Department is not concerned. So far as the Rent Act is concerned, the following measures may increase building activity:-

(1) to permit the landlords to make a percentage increase in rent; or

(2) to provide that the Act will not apply to buildings constructed after a specified date.

As regards (1) above, it may be mentioned that in the Bill which was introduced in the Assembly in the February 1947 session, there was a provision enabling the landlords to make an increase not exceeding 10 per cent. There was severe criticism against this Bill from the public and the Bill was withdrawn. This provision was removed from the revised consolidated Bill which was moved in the next session. There will be a hue and cry from the tenants if the provision is proposed to be made again. No increase in rents need, therefore, be allowed.

As regards (2) above, it may be mentioned that the English law viz., the Increase of Rent and Mortgage Interest (Ware Restriction) Act, 1915; provided that the Act shall not apply to newly constructed buildings. If such a provision were to be made in our Act, there will be protests from the tenants and the provision is also likely to be severely criticised on the floor of the Assembly. As the provision, if made, will come into operation only with effect from the date on which the amending Act comes into operation, tenants who are already in occupation will not be in any danger of being thrown out; but as has already been stated above, the amendment is likely to be construed as a gift to the landlords to enable them to start a racket in rents and it would be inadvisable to make such an amendment.

5. There are other ways of encouraging building activity but these concern the Govt. of India, e.g.,:-

(a) Municipal property taxes should be allowed to be deducted as expenditure before taxing landlords for income-tax purposes. The Govt. of India had proposed this during the last budget session but dropped it for reasons unknown to me.

(b) Higher depreciation should be allowed on increased cost of building. If a building which would have cost one lakh in 1939 now costs, say,

4 lakhs, depreciation at the normal rate should be allowed on one lakh and at a much higher rate, say, 200 per cent higher, on the inflated additional cost of Rs 3 lakhs. The Govt. of India has in the case of new ships allowed special rates of depreciation.

(c) Import duties if any on building materials e.g., cement, iron and steel etc., should be waived.

(d) Loans may be granted at cheap rate through the Industrial Finance Corporation. "Building" after all is an industry.

Sd/-
Chief Secretary,

I agree with Secretary, H.& L.D. that besides inviting serious criticism from the public the amendments proposed by addl. Secretary L.D. are not likely xxxxxxxxxxxxxxxxxxi-dxingxxcxxxxxxxxx to achieve the object in view namely to stimulate building activity.

2. The slowness of building activity seems to be due mainly to two factors:

I-I
5-8-49

(1) difficulty of getting building materials

(2) fear that investment in buildings at this juncture would not yield an adequate return when rents beging to fall.

As regards(1), the question will have to be discussed with the Government of India as it involves consideration of their import and export policy and provision of more expeditious transport. As regards(2), the fear seems unjustified for some years to come that is until

the number of new buildings constructed increases to such an extent that there will be competition among the landlords to secure tenants or until the population of Bombay begins to decrease.

3. I also agree with Secretary, H.& L.G.D. that there would be some incentive to building activity if the Municipal property taxes were deducted from the total income for purposes of income tax and import duties on cement, steel and other building materials were reduced if not altogether waived. I think serious efforts should be made to induce insurance companies to go in for investments in respect of construction of new buildings. The possibility of giving loans at cheap rates of interest for construction of new buildings should also be examined.

Sd/-
10-8-49.

H.P.

H M labour

H mM F D

H M R D

Secretary Lab. Deptt may study the problem and the proposals, The Rent Act is now being dealt with in our Dept, and we have to consider all the implications of any departure in the present policy in this matter.

Sd/-
24-9

As directed by H.M. I put up the following note in connection with the Rent Act which Labour Department is now called upon to administer.

2. Mr. Kunte has proposed on page 2 that the investing public ought to be induced to enter into the building business. H.P. expressed agreement with this on page 4. The factors which have scared away the investing public are pointed out by H.D.Labour at page 10:

(1) scarcity of iron, steel and cement which prevents large-scale vertical construction on costly lands in Bombay;

(2) Unwillingness of private investors to build with traditional materials in places where land is relatively cheap;

(3) Apprehension that the value of investment would sink heavily with the fall in prices which may occur in course of time while the restrictions under the Rent Act remain intact. HMCSD has suggested on page 12 that unless the Rent Act is relaxed for new buildings no investor would come forward.

3. All aspects in relation to the Rent Act and the need for buildings activity at the hands of private investors were fully discussed in the Housing Advisory Committee's meeting held as early as 13-2-'48(proceedings at pages 297-367 of p.& S.D. File No.811/45 Part II kept below). H.M.,L.S.G. (Hon'ble Mr. Vartak) gave a clear statement about the objects andoperation of the Rent Act at pages 319-325 of that file. In particular, he concluded by inviting suggestions as to some formula regarding the fixation of rentfor being laid down in the Rent Act or the rules thereunder(See 'A' on page 323 of the proceedings). The speech of mr. Manu Subhedar at pages 325-329 sums up the attitude of the

private investor. 'B' on page 325 and 'C' on page 327 may particularly be noted. Mr. Pradhan, then Secretary in charge of the Rent Act stated in answer to 'D' on page 359 as follows: "Mr. Manu Shahedar said that rent cannot be standardised because types of buildings vary and the returns that the capitalists or investors expect also vary. That is exactly the reason why we have provided in the-- Ordinance and in the Rent Act an elastic mexthod. That method is the method of decision in individual cases depending on the facts and circumstances of each individual case." 'E' on page 329 reveals the mis-givings that the private investors felt about the justice and discretion of the Rent Court(the passage reads: It is tantamount to throwing my free capital into forzen capital and trusting to the justice of the Rent Court or the discretion of the Government which nobody is prepared to do). In my opinion, it would be desirable to amend the Rent Act to the extent of explicitly laying down that in fixing standard rent under Section 11 the Court shall have regard inter alia to the actual cost incurred in putting up a new building. No percentage return on capital need be fixed by the assurance that the inflated costs of the present day in putting up a building would be regarded in fixing-- standard rents would go a long way in re-assuring the investing public. This may result in equivalent accommodation being let at a low rentwhere a building is old and at a high rentwhere a building is new

but this cannot be helped. Indeed, standard rents of Govt. buildings are fixed on the building costs and very varying results actually occur and prevail in operation in the matter of recovering rents. The building cost principle, if incorporated in section 11, would preserve reasonable rents for the investors and there is no fear of fall in such rents within a foreseeable future because of the pressure of population in Bombay and other cities. The provision would meet remedy 'b' in Mr. Gholap's note on page 21 and to this extent justify an amendment of section 11 referred to by Mr. Dhurandhar in para 2 on page 13. I agree with Mr. Gholap that no other amendments of the Rent Act are called for.

4. I concur with the remedy 'a' in Mr. Gholap's note on page 21 which is approved by Chief Secy. on page 23. If Government agrees, we may take up the matter with the Govt. of India suggesting deduction of muncipal property taxes as expenditure for purposes of reckoning income-tax. As regards the difficulty of getting cement, steel and iron, it is not now possible to sponsor imports and the Government of India have definitely set themselves against imports of these commodities. The building public is expected to face realities and adopt traditional methods of construction with indigenous materials. Import of pre-fabricated panels is also now out of question. As regards loans through the Industrial Finance Corpporation, I doubt if loans for housing would be covered but, is is open for private builders to approach the Corporation with specific proposals. (Finance under the Govt. of India's Industrial Housing Scheme is shrinking fast and even direct construction by Govt. is likely to fall off). The Province will have to look to its own funds for the purpose of assisting

Co-operative Housing Societies or other Builders.

I have already expressed my views in this matter at pages 22 and 23.

2. I agree with the suggestion made by Secretary, Labour Department, at ✱ A on page 25 of his note.

Sd/-
13-10-49.

H.M.(Labour)

sgp/-
12-7

The two measures of the Legislature which have to a certain extent discouraged private building activity in the Province are: (1) The Bombay Rents and Hotels and Lodging Houses Rates Control Act and (2) the Bombay Land Requisition Act. Both the measures are undertaken in the interest of the general public and to prevent exploitation and profiteering on the part of the owners of lands and buildings. The provisions of the Bombay Land Requisition Act are very wide in as much as they empower Govt. to requistion any land including buildings for any purpose (see p.5). Without making any amendment in the Act itself the policy underlying that Act has been to some extent relaxed in regard to new buildings by virtue of the Land Requisition(Exemption) Rules 1948. The rules provide that certain kind of buildings including new buildings shall be exempt from the provisions of Sections 5 and 6 of the Act under certain conditions. This policy of Govt. is explained in the Press Note which was also issued then. But it does not appear that these concessions have much eased the situation or the private building acitivity has been in any manner stimulated.

2. In regard to the Bombay Rents and Hotels and Lodging Houses Rates Control Act, the policy underlying the Act is to impose restrictions on landlords. It does not appear that time has come for the entire removal or the relaxation of the control to a great extent. It does not

appear that such policy will find favour with the Legislature. On the other hand, the policy has been to tighten such control. In the budget session of this year by the Amending Act III of 1949 a provision under section 10A was inserted in the Bombay Rents & Hotels & Lodging Houses Rates Control Act by which the concessions given to landlords to pass an increase in municipal rates and taxes was withdrawn, if such increase comes after 31st March 1949. In this connection the amendment of the Act by the inclusion only of an explicit provision that in fixing the standard rent under sec. 11 the Court shall have regard inter alia to the actual cost of the building will not in any way work as an incentive for the purpose of stimulating private building activity. It will appear from the note at p.13 ante that the Courts are actually following the practice of fixing the standard rent in the case of new buildings by taking into consideration the cost of the construction of the building and by having regard to reasonable return on such cost. The amendment of the Rent Act by including an express Provision to that effect in the Act will not have the effect of inducing private capitalists to undertake new buildings. There are other circumstances such as the facilities to acquire building materials or loans to persons who would undertake the construction of new buildings. which should be explored to encourage private enterprise. The question of moving The Govt. of India to permit for the purpose of Income-tax deductions of municipal rates and taxes which in this Province cannot be passed on to tenants after 31st March, 1949, may also be considered.

Sd/- 28-10

We shall take it for further discussion on Mr. Dravid's return.

Sd/-4-11

6/8/56

Discussed.

Please ascertain what the practice of the Courts is today in the City of Bombay. Whether they take into account of cost of construction of new houses and what basis of return is adopted. If necessary, a few judgements may be sampled as regards new houses. Which Courts to be consulted?

Sd/-
2-12.

The Court of Small Causes, Bombay is the competent Court in Bombay City and also greater Bombay to decide any application made under Sec.11 of the Rent Control Act for the fixation of "Standard rent" Hence the accompanying letter to the Chief Judge, Court of Small Causes, Bombay may issue.

Sd/-
9-12

Instead of addressing the Chief, it would be better to address the "Govt Pleader High Court" and the "Solicitor to Govt in the Legal Deptt" to furnish us the necessary information and copies of judgements. Please address accordingly.

Sd/-
10-12.

The draft on p.32-33 part has been slightly modified and any issue be apparent.

Sd/-
13-12

Sd/-
14-12.

6/6/88 sep/-
12-7

No.906/48-
Lab. Department
Bombay Castle, 15th Dec.'48.

To

(1) The Government Pleader,
High Court, Bombay.

(2) The Solicitor to Govt in the Legal Department.
Legal Dept. Secretariat, Bombay.

Subject:- The Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947.
Fixing of "Standard Rent" under--

Sir,

I am directed to invite attention to the Section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act 1947, under which the particular Court concerned is competent, upon an application made to it, to fix the "Standard rent" for premises, at such amount as, having regard to the provisions of this Act and the the circumstances of the case, the Court deems just. As this section is designed to give full discretion to the Court to fix the amount of the "Standard rent" it does not lay down the particular factors which should be taken into consideration in fixing this rent. However, Govt. would like to know what factors are actually taken into consideration by the Courts when deciding upon the "Standard rent", particularly in the case of the rent for new houses in Bombay City. I am therefore, to request you to forward to this Dept at a very early date whatever information you may have on this subject, and in particular to state whether, so far as the City of Bombay is concerned, the Court of Small Causes, Bombay, which is the Court competent to fix "Stand rent" for premises in the City, takes into account the actual cost of construction of new houses and, if so, what basis of return is adopted. Copies of a few relevent judgements delivered in these cases illustrating the basis adopted as regards new houses, may please be forwarded with your reply.

Yours faithfully,
Sd/- 14-12.

sgp/-12-7

No.14735
Legal Department,
Bombay Castle, (Bombay No.1. 19th Dec.'49

To

T.R.Kapadia, Esquire, M.A.,LL.B.
Government, Advocate in Small Causes Court,
Jer Mahal, 1st Floor, Dhobi Talao,
Bombay.

Subject:- The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, Fixation of-- Standard Rent under--

Sir,

I beg to send you herewith a copy of the Letter No.906/48-F(Labour Department) dated the 15th instan to hand in this Department on the 17th ~~idem~~, idem, and have to request you to kindly furnish the information immediately to enable me to convey the same to the Labour Department.

Yours faithfully,

Sd/-R.D.Nigndkar

Solicitor to Government.

Encl.
Copy letter.

No.14736
Legal Department,
Bombay Castle, 19th Dec. '49

Copy forwarded with compliments to the Labour Department for information.

Sd/-
Solicitor to Government.

Lab.Deptt.
Sd/-

awt. till 15-1-50

Sd/-
1-12

sgp/-
12-7

No.15079
Legal Department,
Bombay Castle(Bombay No.1) 24th Dec.'49

To

The Secretary to the Government of Bombay,
Labour Department.

Subject: The Bombay Rents, Hotel & Lodging House Rates Control Act, 1947.
Fixation of "standard Rent" under---

Sir,

With reference to your letter of the 15th instant bearing No.906/48-F, I enclose herewith a copy of a letter received by me from Mr. T.R.Kapadia, Government Advocate, and also of the judgement referred to therein.

Mr. Kapadi's letter and the judgemnt discusses all the relevant matters relating to the fixation of standard rent of new premises. In fact, the judgement is the latest judgment of the Small Causes Court in wchih the Court has laid down the various tests necessary for the purpose.

Yours faithfully,

Sd/-

Solicitor to Government.

sgp/-
12-7

DAVAR & KAPADIA
ADVOCATES, HIGH COURT.

Jer Mahal Estate Block A1.
Old Prag Mahal
Kalbadevi Post
Bombay 2.
20th December 1949.

R.D.Nirgudkar, Esq.,
Solicitor &to Government,
Bombay Castle.

Subject:- The Bombay Rents, Hotel & Lodging House Rates Control Act, 1947; Fixation of Standard Rent under-

Dear Sir,

I have to acknowledge receipt of your letter of the 19th Inst. in connection with the above subject.

The position under sections 5(10) & 11 of Act 57 of 1947 is as follows:-

Under sub-section(10) os Section 5, rents of premises are stablized on the level of rents charged on 1st Septemeber 1940.

If the premises are old buildings but they have not been let on that day but they have been subsequently let, then under Section 11 sub-section(a) the Court has a power to determine the Standard Rent if the rent at which the premises are let is in the opinion of the Court excessive.

2. With regard to old buildings, the only criteria available for the purpose of ascertaining whether the rent is execive or not:

(a) Comparative basis

(b) Mode usually adopted by Rating Authreities for ascertaining the net annual value.

In practice the Court of Small Causes usually adopts the comparatice method provided that the neighbouring properties are in point of amenities, location and other respects similar to the property of which the rent is questions.

3. With regard to new buildings the Court of Small Causes does not follow the comparatice basis by reason of the circumstance that the cost of construction has gone up more than three times over the 1940 level. It has been said that if such a method were adopted, the landlord would practically

get no return on his investment and this would discourage building activities at a time when the acute shortage of housing accommodation requires nominal incentive to investors in the property market. Consequently the method adopted by the Court of Small Causes for the ascertainment of standard Rent of new buildings proceeds upon what is known as the Contractor's Test. In the first place the cost of the land and building is ascertained at the date of construction and a net return of 4½ % on land and 5½ % on buildings is calculated In order to ascertained the gross rent which is to be charged to the tenant, all outgoings such as Muncipal and property taxes, depreciation, collection charges &C., are taken into account and added to the figure of net return on investment. The judgment of the Appeal Court already sent to you ellucidates these points in greater detail.

4. If there is any further difficulty in the matter, I shall be pleased to give you further information.

Yours faithfully,

Sd/-

Advocate, High Court.

sgp/-
12-7

In the court of Small Causes at Bombay.

Appeal No.101 of 1949.
in
R.A.Application No.805 of 1948.

Sorab D. Talati. ... Appellant.
Original Respondent.

versus

Joseph Midhem. ... Respondent
Original Applicant.

Appeal No.102 of 1949.
in
R.A. Application No.191 of 1948.

Sorab D. Talati. Appellant
Original Respondent.

versus

Jesudabai widww of Jethandnd Demmal
Dwarulal Bhagwandas and Shamlal Bhagwandas
heirs andlegal representatives of
Jethanand Deomal deceased, the last being
a minor by his bwother who acted as his
next friend in the original proceedings
and now Guardian-ad-litme for this
appeal. ... Respondents
Original Applicants.

Appeal No.104 of 1949
in
R.A. Application No.191 of 1948.

Jesodabai w/o Late Jethanand Demal
and others residing at Rus Cottage,
Bombay. .... Appellant
Original Applicants.

versus

S.D. Talati, Parsi adult
landlord carrying on business
at Bombay. .... Respondent
Orignial Respondent

Mr. A.S.Davar with Mr.C.C.Vakil and Mr.S.G.Vakil for Appellant in Appeals Nos. 101 and 102 of 1949.

Mr. B.S.Rahaja for Respondents in Appeals Nos.101 and 102 of 1949.

Mr.C.B.Wadhwa for Appellant in Appeal No.104 of 1949.

Mr.A.S.Davar for Respondent in Appeal No.104 of 1949.

Coram: M.D.Lalkaka, Chief Judge
and Barodawalla J.

JUDGEMENT.

These three appeals arise out of two Miscellaneous Applications made by two tenants against their landlord for

the determination of the standard rent of the respective portions of the premises occupied by them in a bunglaww known as Rus Cottage at Versova in Greater Bombay, The learned trial Judge having fixed the standard rent, the landlord has filed the first two of these appeals on the ground that the contractual rents not being excessive, the same should be fixed as the standard rent of the respective premises; while one of the tenants who occupies the first floor of the bunglaow has filed a corss-appeal against the landlord on the ground that the standard rent fixed for his premises should be fixed at a lower figure than the amount fixed by the learned trial Judge.

According to the Applications, the first floor of the bungalow in question with which Appeals Nos. 102 and 104 of 1949 deal was let to the tenant on 25th September 1947 at Rs. 500/- per month, while the ground floor was let in September 1947 to the other tenant at Rs. 250/- per month and Rs. 35/- per month for hire of certain furniture. From January 1948 the landlord reduced the contractual rent of the ground floor premises to Rs. 200/- per month taking an additional Rs. 6/- per month for sanitary cess, Rs. 5/- per month for water charges and Rs. 8/- per month for electric charges. Both the tenants contended that the rent charged was very much in excess of the standard rent and the, therefore, requested the Court to fix the standard rent under section 11 of Bombay Act 57 of 1947.

I It is not disputed that no portion of the bungalow was let at any time before 1948, as previously the bungalow was in the occupation of the landlord and his family. In August 1942 the premises in question were requistioned by Government together with certain other bungalows of the owner. At the time of the requistioning no compensation appears to have been fixed as payable to the landlord for the requisitioned premises; but about a year later, i.e.,

in or about July 1943, the owner agreed to accept Rs.175 per month for the bungalow in question and requested the Government to make out a separate agreement for the bungalow putting down the rent at Rs.175/- as evidenced by his letter dated 12th July 1943 addressed to the Additional Deputy Collector. In consequence, an agreement was thereafter made as of the 28th June 1943 between the owner and the Governor-General-in-Council reciting the requisitioning of the bungalow in question and recording an agreement by which Government agreed to pay and the owner agreed to accept "a sum of Rs. 175/- per month in full settlement of the compensation for the land with or without structures" with effect from 1st August 1942. Clause 3 of that agreement further provides that the owner was not entitled to claim any further compensation in lieu of rent beyond the amount fixed and accepted by him in accordance with the said requisitioning. It appears that before the actual order of requisitioning, which was passed on the 11th of August 1942, the owner had put all the bungalows at the disposal of the military authorities on 1st August 1942 according to the verbal instructions given to him by the Garrison Engineer at the time, as stated by the owner in his letter dated 12th July 1943.

On considering these facts the learned ~~xxxxx~~ trial Judge came to the conclusion that what was paid by the Government and received by the owner in respect of the bunglaow was rent, as that word had been used by the owner in his letter dated 12th July 1943 and, therefore, the first letting of the bungalow by the owner after 1st September 1940 was at Rs. 175/- per month. We cannot see how this coclusion can be sustained. When premises are in fact requisitioned by the superior authority of the State under the powers vested in Government by the Defence of India Act or similar legislation, the owner has no

choise but to obey the order of requistioning andplace the premises at the disposal of Government, andhis only right is to recover such compensation as may be provided by the legiddation itself which gives power to Government to requistion the premises. Under such circumstances, no requistion of relationship of landlord and tenant can arise between the requisitioning peramount authority andthe owner; and even though he or even both the parties may call what was xpayable "rent", the use of that word cannot create a relationship of landlord andxxtenant between the parties, nor can it alter the payment from being purely a compensatory payment to a payment of rent. It, is, however, contended on behalf of the tenants that in the presentxxx case as the premises were placed at the disposal of Government by the owner some 11 days before the date of xxxxxxxxxxxxxxxx the actual order of requisitioning, for these 11 days at least the premises must be taken to have remained under a letting to Government. We are unable to accept this contention, because the placing of the premises at the disposal of Government for a few days in anticipation of an order of requisitioning being actually issued cannot create a relationship of landlord and tenant between Government and the owner for those few days; but the real position is that the requisitioning is taken to have been in force as from the date when Government actually enters into occupation of the premises as if the order had been pre-dated, and the agreement entered into between Government and the owner in the present case is on that footing. We must, therefore, hold that there was no letting of the premises to Government in 1948 or thereafter until the premises were de-requisitioned in 1946. As it is not disputed that there was no subsequent letting to any person other than the tenants who are parties to these appeals, the letting to these

two tenants must be held to be the first letting of the premises in question for the purpose of considering the standard rent of the premises under Bombay Act 57 of 1947.

These Appeals are some of the first to come before the Appeal Court in which the question of the principles to be applied in determining the standard rent of premises in Greater Bombay under section 11 of the Act arises. In consequence, in order to ensure some uniformity in the determination of standard rent under the section and to serve as guidance for the future in such cases we have considered it necessary to indicate those principles in a comprehensive manner even though some of the questions do not actually arise in the present Appeals.

Section 5(10) of the Act provides that the "standard rent" in relation to premises not let on or before 1st Septemebr 1940, should be taken to mean the rent at which the premises have been first let after 1st September 1940 subject to the provisions of section 11; while section 11 provides that where any premises are first let after 1st September 1940 and the rent at which they are so let is in the opinion of the Court excessive, the Court may upon an application made to it for the purpose fix the standard rent at such amount as, having regard to the provisions of the Act and the circumstances of the case, the Court deems just.

The Act itself gives no indication of what is to be considered by the Court as "excessive"; and so in coming to the conclusion that the rent fixed between the parties is "excessive" or unreasonably large or more than the proper or reasonable amount, the Court has firs to determine what rent should be considered as reasonable or proper. Only after ascertainment, the Court can say whether the rent actually fixed exceed that norm or reasonable or proper figure so as to be considered "excessive". Of course, in the first instance, the onus

is entirely on the tenant, before he can invoke the jurisdiction of the Court ot interfore under section 11, to show that his case comes within the provisions of that section by reason or the rent fixed between the parties being unreasonably large; and no duty is cast on the landlord to show that the rent fixed by the contract of tenancy, which is otherwise taken as the standard rent of the premises under section 5(10), is not excessive or unreasonable or improper. The provisions in question contained in theAct of 1947 are restrictive of the landlord8s rights under the ordinary law to enter into any contract of tenancy at any rent as he desires; and in construing such restrictive legislation, where there exists any doubt, such doubt must, under the ordinary canons of construction, be resolved in favour off the landlord whose rights are sought to be restricted by reason of the speciil statute, and all doubts must be liberally construed in his fagour.

Looking to the provisions of the Act as a whole, there appears to be no doubt that it is the intention of the legislature ordinarily to crystallize all rents xf at a particular date line fixed by it, viz., 1st September 1940. Under the circumstances, in respect of premises already existing in a tenentable state on 1st September 1940, the fortuitous circumstance that they were not actually let on or prior to that date cannot allow the Court to regard them on any other footing than similar premises in the neighbourhood which were in fact actually 1st let on that date, so that in respect of actually existing premises, the best criterion for the Court to follow in fixing what must be regarded as reasonable rent would be to ascertain the rent of other premises in the neighbourhood which by reason of their situation, construction and amenities can be regarded as reasonably

comparable with the premises in question, and, after making allowance for any differences in area, amenities, etc., to fix the rest of the premises in question on the same basis as the rents prevailing in the locality for other similar premises on 1st September 1940. If, however, no satisfactory evidence is led before the Court for an ascertainment of fair rent on the basis of comparable premises either in the same building or in the locality, the only other method the Court can adopt is to ascertain the value of the land and the cost of the building concerned as in September 1940, making due allowance for depreciation according to the age of the building, and fix the rent of the premises in question on the basis of a reasonable return to the owner on his investment according to the method indicated in the subseqeunt portions of this judgment.

In the case of buildings constructed after September 1940, it is not possible to apply the method for the ascertainment of reasonable rent by comparing the rent fixed with those prevailing in the locality on 1st Septemeber 1940. Such a proeedure would make it practically impossible for the owners of land to embark on the construction of buildings for the use of tenants, because the cost of building construction, both in materials and labour, has gone up by 200 to 300 per cent. Since the outbreak of the last war and outgoings have very considerably increased, with the result that if the figure of rents of similar premises already existing in September 1940 are applied in fixing the rent of the same sort of premises built recently, the result would be to give hardly any return whatsoever to the landlord on his investment. The scheme of the Act makes it clear that the evils which the legislature intends to remedy are those rising from the acute shortage of space available for

occupation by tenants and lodgers and it cannot be taken to be the intention of the legislature to discourage the building of new premises but on the contrary the intention must be presumed to encourage all owners of land to build and make available new premises for occupation by tenants and ledgers so as to relieve the acute scarcity of accommodation. Besides, in crystallising the rents as on 1st September 1940 it is reasonable to presume that the legislature must have taken into account the fact that the contractual rents then prevailing as fixed by the owners of the property fairly represented a reasonable return which those owners would except to receive on the investment they had made in those properties; so that in the case of buildings built after 1st September 1940, the only fair criterion that the Court must adopt must be based on what should be considered as the reasonable rate of return to the landlord on what he has invested in making the premises available to tenants.

In determining what constitutes reasonable rent of any premises regard must be had to the nature of rent which is a return on the investment made by the landlord in providing the facility for the enjoyment of which the tenant agrees to pay rent. As in the case of other investments, what is a reasonable return on a particular investment must ordinarily depend on (1) the market value of money, and (2) the security of investment. In the case of investment in immoveable property, what is ordinarily considered as a reasonable return depends upon the nature of the property from which the rent is excepted. For example, in England immediately before the two World Wars when the rate of interest on gilt-edged securities was round about two and a half per cent., about four per cent. on the value of land and about five per cent. on the value of buildings was considered to represent the net annual

value of ordinary private property on the basis of a reasonable return to the landlord on his investment, Vide Ryde on Rating, 8th Ed.(1946), page 289; Witten Booth on Valuations for rating, 3rd Ed.(1937), pages 144 and 145. Gross value for rating, is defined as the rent at which a hereditament might reasonably be expected to let from year to year if the tenant undertook to pay all usual tenant's rates and taxes and if the landlord undertook to bear the cost of repairs and insurance, if any, necessary to maintain the hereditament in a state to command that rent; provided that in estimating the annual rental value of a herditment, no account is taken of the value of any services which the landlord renders or procures to be rendered (either alone or in common with other tenants of the landlord) other than the provision of repairs to or maintenances of the hereditaments: vide Witton Booth, pages 22-23. The difference in the gross value and not annual value is thus represented by the expenses which must be incurred in order to ensure perpetuity to the net annual value and which comprise repairs, insurance and maintenance including previsions for eventual replacement: videIbid page 11. Thus, as the net annual value does not include outgoing and in England the person to be rated is the occupier and not the owner of land as here, except in certain exceptional cases provided for by statue(Vide Ryde on Rating p.7) the 4 per cent. on the value of land and 5 per cent. on the value of buildings ordinarily provided for, would represent the net return to the landlord after meeting the outgoing which the landlord is called upon to meet and for which, in the case of houses, an allowance is permitted of from 16 2/3 per cent. to 25 per cent. according to the annual rents: Vide Witton Booth on Valuations for Rating, page 15. Taking the average deudction at 20 per cent;. a gross rent equal to 5 per cent. on the value of land and 6¼ per cent. on the cost of buildings will give 4 per cent, and 5 per cent. net return respectively to the landlord, the rates being paid by the tenant himself. The difference of about 1½ per cent. and 2½ per cent. respectively between the net return expected in

respect of gild-edged securities and of land and buildings is explained not only by the trouble and expense involved in collecting the return but also by the risk of vacancies and bad debts; and in addition to these considerations, in the case of buildings the further trouble involved in looking after and keeping the same in a proper condition to fetch the rent and the risk of loss by a cause other than fire, like earthquake or civil commotion, against which no insurance is ordinarily taken by the landlord. In consequence of facts such as these, a person investing in land and buildings would naturally expect a substantially higher return than what he can secure with ease and safety by going in for gilt-edged investment; and in addition to such net return he must also expect to realise from the rent the normal outgoing which are provided for in rating, viz., the cost of repairs and fire insurance and also the amount required for depreciation to keep his investment in a state to yield the expected net return in perpetuity.

In India the rate of return on gilt-edged securities prior to the Wars was higher by about half to one percent. as compared with the rate prevailing in England, and in the case of municipal rating ordinarily since prior to the Wars about five per cent. on the value of land and six per cent. on the cost of buildings has been taken as the net rateable value of properties in the case of which there is no evidence of rental value available for comparision; vide Kewshik on Rating, 1947 Ed., page 401. The Muncipal Rates before the two World Wars were 16/3/8 per cent. on the net rateable value and deducting the Rates, the basis of net return to the landlord would work out at 4 1/6 per cent. on the value of land and 3 per cent. on the value of buildings. In the opinion of Mirams, who practised in Bombay as a surveyor for many years and had great experience in the valuation of real property and kindred matters, in the case of monthly and weekly lettings six per cent. to seven per cent. would be the normal return which a landlord would expect for letting his property on such terms: vide

Miram's Valuation of Real Property, pages 167-68.

Bombay Act 57 of 1947 gives no specific indication as to what should be considered as a reasonable return for landlord for letting his property, but the previous Rent Restriction Act of 1939 had one provision, viz., section 6, which enacted that where the landlord since 1st January 1939 had incurred any expenditure on any improvement or structural alterations to any premises, as increase of rent at a rate not exceeding six per cent. per annum on the amount so expended would not be deemed to be an increase in rent for the purpose of the previous section. Although this 6 per cent. allowed would be a gross return on the expenditure, the fact has to be considered that this particular provision in the Act applied to cases where without any volition or comment of the tenant, the burden or rent falling on him had to be enhanced by an impovement or alteration of the premises made at the will of the landlord. In consequence, when the present Act was enacted to consolidate the law, the legislature having provided the safeguard for the tenant by requiring the tenant's consent in writing to any such improvement or alterations, no limut of six per cent. as in the former Act has been placed on the power of the Court to allow a reasonable return on the amount expended by the landlord, vide section 9 of Act LVII of 1947.

As the present Act does not restrict the Court to any definite figure as to reasonable rent which should be allowed to the landlord, on a consideration of all the prevailing circumstances and the fact that the present return on gilt-edged securities is slightly over 3 per cent., we think that a net return of 4½ per cent. on the value of land and 5½ per cent. on the cost of buildings cannot be considered in any sense unreasonably large or excessive for a landlord to expect in respect of his investment in immoveable property, especially in the case of short-term tenancies like monthly tenancies, and we think that any return over what figure may be considered by the Court as excessive under the circumstances prevailing

since 1st September 1940. To get this net return, the landlord has to deduct from the gross rent the ordinary outgoings and the Muncipal rates including the Urban Immoveable Property Tax. As the new Act has come into operation since 13th February 1948 on the basis of the rates prevailing since 1st October 1947, the allowance to be made for such rates and taxes is 28½ per cent. on the net rateable value or 24 per cent. on the gross rent in the case of properties in the City of Bombay. In the case of properties situate in Greater Bombay outside the City the rates and taxes are practially the same in the case of the Bandra, Santacruz and Khar Muncipalities even without the water tax, while in the case of the Ghatkopar the Parle-Andheri Muncipalities the rates and taxes without the water tax amount to are 15 3/4 and 20 per cent, respectively on the net rateable value or 14.175 and18 per cent, respectively on the gross rent,. In the case of all these Muncipalities, extra water tax is charged on measurment by meter and is usually paid by the tenant. The ordinary outgoings in the case of a building of reasonably good construction with an expected life of about 60 years would be half per cent, for repairs, one-eighth per cent. for insurances and 61 per cent. for depreciation or sinking fund on the usual gilt-edged securities or 3 per cent. basis(vide Witton Booth, p.565) or 90 per cent. of the cost of construction on a total of 1.1 per cent. on the total cost of the building; which added to the 5½ per cent. net return to be provided to the landlord would require 6.6 per cent; on the cost of the building. Taking the Muncipal rates and taxes at 24 per cent. of the gross rent, a gross return of 8 2/3 per cent. on the cost of the building and 6 per cent. or the value of the land will give the landlord a total gross rent which after meeting the ordinary outgoing and rates and taxes will leave him the net return of 5½ per cent. and 4½ per cent. respectively which, in our opinion, he can reasonably expect from his investment. Of course, if the tenant has agreed to meet any of the ordinary outgoings himself or

to pay any of Muncipal rates and taxes (other than the water tax in the case of properties in Bandra, Santacruz or Khar), a corresponding deduction must be made from the rent payable by the tenant. On the other hand, if the landlord has agreed to pay for any services for the property, e.g. by providing a liftman, or for any supply like electricity(or water in the case of properties in Bandra, Santacruz or Khar) which ordinarily the tenant must pay for, then a corresponding increase in rent must be allowed to the landlord. Another factor which may have to be provided for would be in the provision for the sinking fund; because if the estimated life of the building does not correspond with the average figure of 60 years on which basis the above calculations are made, the rate of gross return on the cost of the building will have to be adjusted according to the estimated life of the building. Thus if the estimated life is taken to be 40 years, the gross return would hage to be increased to 9½ percent. as the provision for sinking fund with the rates thereon would require to be increased by :87 per cent. on the cost of the building; while if the life is taken to be 80 years, the gorss return would have to be reduced to 8 1/5 per cent. on a similar decrease of .36 per cent. on the cost.

In ascertaining the above figures, as allowance is made for outgoing, and rates and taxed at average normal figures, in individual cases there may be some departure from these figures and the net return may be affected if the exact figure of outgoing or taxes are ascertained and taken into account. In fixing standard rent in such cases, however, the procedure prescribed by the legislature is of a summary nature and the Court is not called upon to work out the fair or just rent to the anna and pie by applying scales of gold; but a fair estimation of the outgoing as made in the previous paragraphs should generally be quite sufficient for the purpose of arriving at a fair and reasonable figure of rent,

except where the Court is satisfied that the figures of outgoing are proved to be so considerably different form those adopted, that a very large difference in the net return, say, of half a per cent. or more, would be brought about of course, no increase of local taxation after 31st March 1949 has to be taken into account by the Court in ascertaining the net return to be gigen to the owner, as it is the intention of the legislature by the enactment of section 10A that any such increase should not be taken into account in allowing an increase of rent to the landlord. Thus in all normal cases the figures indicated by us would, in our opinion, be a proper summary method for the ascertainment of the reasonable andfair rent of the premises required to be made by the Court.

The next question that arises is as to the method to be followed in ascertaining the value of land and the cost of buildings. If the owner has purchased the land very near the time when the construction of the building has taken place, the best criterion for ascertaining the value of the land would be the price paid for the land by the owner. Otherwise, such value may be ascertained by making due allowances for appreciation or otherwise of land values in the locality after the purchase of the land in question, or the Court may have to ascertain the value by taking evidence as to sales of comparable lands in the locality about the time of constuction, or the matter might be referred to a competent valuer as a commissioner to value the land at such time. In ascertaining the value of the land required for the construction of the building and the use and enjoyment of the tenants thereof, a question often arises as to whether the whole land of the owner should be taken into account or whether only a portion of that landshould be taken as partianing to the building. How much land should be taken as utilised by the owner for the purpose of the owner's investment would depend upon the facts of each case, but generally

the Court must take into account the way in which the building or buildings are distributed over the land and the land is laid out for the use and enjoyment of the tenants, to see whether the whole land or only a portion thereof should be allocated to the building for the purpose of valuation. Of couse, where the building requirements laid down by the Muncipality or other authority concerned required only a portion of the land to be built upon and the rest to be kept open, the minimum land required for such building has always to be taken into account as pertaining to the building. If after deducting this minimum the rest of the land of the owner left unbuilt is of such a size and nature that there would not be much chance of its being used in the near future for building purposes, the same may also be taken as pertaining to the building for the purpose of ascertaining the investment. If, however, the owner has a very large stretch of land andhe builds only on a very small portion thereof, the Court, can separate the requisite amount of land for the construction purposes in question and separate the rest of the land, which may in such cases be taken as meant for other building construction.

As regards the cost of cnnstructing the building, the owner may be able to lead satisfactory evidence before the Court or a Commissioner to prove what the building has cost him, in which event that would be the best guide for ascertaining the cost. In the absence of such evidence, the cost may have to be ascertained by following the usual method of taking the cubical contents of the building and applying to it a rate per cubic foot, according to the materials employed and the quality of construction, as may be ascertained by the Court by appointing a competent valuer as Commissioner to measure and inspect the building and report on its valuation at the time of its construction.

In dealing with applications made by tenants

under section 11 of the Act of 1947, where the ground of such application is an allegation by the tenant that the contractual rent is excessive, the onus primarily is on the tenant to show prima facie that such rent is excessive, before the Court can be asked to embark on a detailed inquiry for the purpose of ascertaining the reasonable or fair rent of the premises. To discharge that onus, therefore, in the first instance the applicant-tenant must, either by his petition or by affidavit, show to the Court in the case of buildings in existence on 1st September 1940 that the rents in the neighbour of comparable premises as prevailing on 1st September 1940 were sufficiently low to make the contractual rent excessive, and this must be done giving specific instances so that the landlord may have a fair notice of the case that he has to meet. On the other hand, in the case of buildings built after 1st September 1940, the applicant-tenant must show by producing the report of a competent valuer that the value of the land and the cost of construction of the building in question would, on the basis of the respective net returns ascertained as indicated above, give to the landlord a substantially lower rent than what is being charged as the contractual rent between the parties. If the applicant-tenant is not able to satisfy the Court in the first instance by such prima facie evidence that the consmactual rent between him and the landlord is excessive, the Court must not embark on any speculative inquiry on the off chance of finding that such rent is excessive, but for want of a prima facie case made out by the tenant to show that the contractual rent is excessive, the tenant's application should be summarily dismissed, or the standard rent should be fixed on the basis of the first letting of the premises or otherwise section 5(10) of the Act of 1947.

Coming to the case of the bungalow concerned in these

appeals, the premises are neither wholly new in the sense of having been constructed after 1st September 1940, nor are they wholly old. The evidence shows that after the de-requisitioning by Government, extensive alterations have been made by the landlord by the addition of rooms, by the enclosure of verandahs, by the provision of modern tiled bath-rooms and lavatories, and by providing for the supply of electricity which did not exist before. The cost of all these improvements and alerations were, according to the landlord, Rs,45,000/-; while the architect examined on behalf of the tenants put down that cost at Rs.25,000/- for some of the improvements and alterations which he specified in his evidence. The learned trial Judge has the benefit of inspecting the premises, and on a consideration of the evidence as a whole he found that the cost of all the improvements and alterations can be taken at Rs.35,000/-. In this respect we agree with the opinion of the learned trial Judge, In consequence, on the principles indicated in the previous portions of this judgment, in ascertaining the gross rent of the bunglow in its present state, the equivalent of 8 2/3 per cent. on Rs.35,000/- would have to be taken into consideration as representing the portion of the rent attributable to the improvements and alterations after the derequisitioning of the bungalow.

This leaves the question of ascertaining the reasonable rent of the bungalow in its original state to be decided. For this purpose some sort of evidence was tried to be led by the tenants with regard to three other bungalows, but there is nothing in the evidence on record to enable the Court to ascertain satisfactorily to what extent those bungalows can be said to be comparable except in floor areas with the bungalow in present condition in its original state so as to ascertain in the fair rent of the letter. No evidence was led in the present proceedings as regards the rents of the three bungalows in question; but it appears from the statement of the learned Advocate

for the tenants that he was under some impression that certain evidence relating to those three bungalows, as taken in other proceedings, viz., Rent Act Applications Nos.210 and 345 of 1948 in respect of a bungalow of another owner, situate at Vergova, was to be treated as evidence in the present Applications also. The learned Advocates appearing for the Appellants state that there was not such arrangement in the lower Court to their knowledge and no note of any such arrangement has been recoreded by the learned trial Judge. We have, however, seen the evidence taken in the other Applications; but even if that evidence were allowed to be taken into consideration in the present Applications, we do not see how the tenants in the present case can be said to have proved by satisfactory materials the factors required for comparision to ascertain the reasonable and fair rent of the bungalow in this case in its original state as in September 1940. The only evidence with regard to the rent of the three bungalows which was led in the other Applications was to the effect that these bungalows were requisitioned by Government in 1942; that Government paid as compensation Rs.195/-, Rs.175/- and Rs.375/- respectively for the three bungalows; that after the derequisitioning, the Bungalows were first let some time in 1947 at Rs.350/-, Rs.350/-, and Rs.800/- respectively; and that subsequently at the request of the tenants the landlady reduced the contractual rents to the respective figures of Rs.125/-, Rs.200/- and Rs.450/-. The evidence does not show whether the bungalows were in fact let in or about September 1940 and if so at what rents, nor is is possible to find out what the reasonable and fair rents of these bungalows would be in September 1940 except by embarking an another elaborate inquiry of the nature necessary to ascertain the standard rent of those three bungalows which are not the subject-matter of the inquiry in these

Applications. When evidence is sought to be led in respect of comperable premises, that evidence must show the rent at which those premises were actually let in September 1940 or reasonably near to that time; otherwise, it is not possible to compare such premises with those in dispute in order to come to a conclusion by such comparison as to the reasonable or fair rent of the latter premises in September 1940. Having regard to these difficulties of the tenants, in the course of the hearing of the appeals we suggested that if the parties desired we might send back the matter to the trial Court for taking further evidence on the question of the rent of any comparable premises in the locality, but the applicant-tenants did not desire any such remand. As we do not think that we can be helped by the evidence on record as regards the three other bungalows in ascertaining what should be fixed as the reasonable rent of the bungalow in question in its original state and no evidence has been led to show the value of the land and the cost of constructing such a bungalow in September 1940, making allowance for depreciation as indicated by us, we might have been forced to hold that the applicant-tenants had failed to prove that the first letting of the bungalow in its present state was at excessive rents but for the fact that we think we can come to a conclusion as to the maximum amount which can be taken in all probability as the fair or reasonable rent of the bungalow in its original state from the fact that the owner agreed to accept from Government as compensation a sum of Rs.175/- per month in 1943 when the rents generally prevailing were not greatly different from those prevailing in September 1940.

In the case of requistioned premises, the owner is not completely a free agent so as to enable him to

higgle with the Government as regards the rentor compensation for the buhgalow taken over under such an order of a superior authority, and if he is not satisifed with what is offered, he is required to go to the trouble and expense of fighting the Government before an arbitrator appointed by the Government. However, we can take it that if the compensation offered to be paid by Government to the owner had been very considerably lower, say by 30 per cent. or more, than the reasonable amount of rent that the owner would loss by such requistioning, is all probability the owner would have been expected to decline the offer and to have gone to the extent of insisting on an arbitration to decide the matter between himself and Government in spite of the trouble and expense of such procedure. Making this allowance, we can say that if a sum of Rs.250/-per month is fixed as the reasonable rent of the bungalow in its original state, it would fairly represnet the maximum rack-rent which the owner might have expected to obtain for the bungalow in September 1940. Adding to this Rs. 253/- per month as representing 8½ per cent. on an investment of Rs.35,000/-, the fair or reasonable gorss rent of the whole bungalow in its present state would come to Rs.503/-. It is in evidence that two rooms on the ground floor are not in the occupation of the ground floor tenant, but one of them is occupied by the first floor tenant and the other is used by the landlord himself. Adopting the mode of apportionment followed by the learned trial judge in dealing with this matter in the lower court, we would primarily apportion the sum of Rs.250/- representing the rent of the bungalow in its original state between the first floor and the ground floor by allowing Rs.150/- as payable for the first floor and Rs. 100/- for the ground floor. Adding to these figures Rs. 126-8-0 in the case of

each floor for the improvement and alterations, the rents would be Rs.276-8-0 and Rs. 226-9-0 respectively for the first and the ground floors. On the basis adopted by the learned trial judge, who had seen the premises in question, with the necessary increase on account of the higher figure of rent for the whole premises as adopted by us, we would take the rent of the room on the ground floor which is used by the upper floor tenant at Rs.35-8-0 and the rent of the room occupied by the landlord at Rs.28/-. The addition of Rs.35-9-0 to the rest of the first floor results in a figure of Rs.312/- as the rent payable by the tenant of that floor; while deducting Rs.35-8-0 and Rs.28/- from the ground floors rent of Rs.226-8-0 leaves Rs.163/- as the rent payable by the tenant of that floor.

In the result, we think Appeal Nos.101 and 102 of 1949 filed by the landlord against both the tenants must succeed to the extent indicated, and, the standard rent of the premises in each case must be fixed at Rs.163/- per month and Rs.312/- per month respectively. Appeal No.104 of 1949 being the appeal of the first floor tenant fails and must be dismissed. As regards the costs of the parties, we think the Appellants are entitled to have their costs in the lower Court while the Respondent is entitled to have the costs of these Appeals. Under the circumstances, we do not propose to make any order for costs in favour of either of the parties.

Appeal No.101 of 1949 allowed. Order of the trial Court fixing the standard rent varied by fixing the standard rent of the premises mentioned in the tenant's application at Rs.163- per month; and the order for costs made by the trial Court set aside; no order as to costs.

Appeal No.102 of 1949 allowed; Order of the

trial Court fixing the standard rent varied by fixing the standard rent of the premises in that tenant's application at Rs.312/- per month, and the order for costs made by the trial Court set aside: no order as to costs.

Appeal No.104 of 1949 dismissed: no order as to costs

I agree.

Sd/- T.Y.Barodawalla
15.12.49

Sd/-M.D.Lalkaka.
15.12.49

Copy furnished by

Sd/-
Chief Judge's clerk.

Copy applied for on 19.12.49
read on 19.12.49
delivered on

sgp/-
13-7

No.6868
Office of the
Government Pleader, High Court,
Bombay, 30th ~~September~~ December 1949.

From

B.G.Thakor, Esqr.,B.A.LL.B.,
Additional Assistant Government Pleader,
High Court, Bombay.

To

The Secretary to the Govermnet of Bombay,
Labour Department, Bombay.

Subject:- The Bombay Rents, Hotel and Lodging House Rates Control Act 1947.

Sir,

With reference to your letter No.906/48-F dated 15th December 1949 on the above subject, I have the honour to send your herewith a copy of the Judgment in Appeal No.101/49; The copy of the Judgment delivered by the learned Appeal No.102/49 ~~and~~ Chief Judge and learned Judge Mr. B-arodawalla in these appeals deals in an exhaustive manner as to how standard rent is to be fixed. These appeals were some of the first to come before the Appeal Court in which the question of the principles to be applied in determining the standard rent of premises under Section 11 of the Act arose and the principles are dealt with in a comprehensive manner. I think you will find all the requisite information on a perusal of the Judgment.

2. The Judgment holds that in the case of buildings build after first September 1940 the only fair criterion that the Court must adopt must be based on what should be considered as the reasonable rate of return to the land-lord on what he has invested in making the premises available to tenants.

The Judgment holds that ne return of four and half percent on the value of the land and five and half percent on the cost of the buildings, cannot be considered in any sense unreasonably large or excessive for a land-lord expect in respect of his investment in immoveable especially in the case of short term te

7/8/66

like monthly finances
tencies and they think that a return over that figure may be considered by the Court as excessive under the circumstances prevailing since September 1940.

The Court further observes as follows:-

"Taking the Muncipal rates and taxes at 24%of the gross-rent, a gross return of 8.2/3 percent on the cost of the building and six percent on the valuexx of the land will give the landlord a total gorss rent which after meeting the ordinary out-goings and rates and taxes will leave him the net return of five and a half percent and four and a half percent respectively which in our opinxxion he can reasonably expect from his investment."

3. This is the standard that the Court has set for normal cases only which in its opinion is a proper summary method for the ascertainment of reasonable andfair rent of t the premises required to be made by the Court.

4. Then the judgment deals with as to how the land should be valued and how the Cost of the buildings is to be ascertained.

The Court also indicates what a tenant must show in order to allegexx that the rent is excessive.

5. I trust that the information which you require will be found from this Judgment. I had to write to the Registrar Small Causes Court for the copies of the Judgments andhe has been good enough to send me only one judgment which I trust will give you all the information you desire.

6. I regret the delay. The delay is due to the fact that I had to get the copies of the judgments from the Registrar, Small Causes Court.

Yours faithfully,

Sd/-

Additional Assistant Government Pleader,
High Court.

sgp/
13-7

IN THE COURT OF SMALL CAUSES AT BOMBAY

APPEAL NO.101 of 1949

R.A.Application No.805 of 1948.

Sorab D.Talati. — Appellant
Original Respondent.

Versus.

Joseph Michem. — Respondent.
Orignial Appellant.

Appeal No.102 of 1949 in
R.A.Application No.191 of 1948

Sorab D.Talati. — Appellant.
Original Respondent.

Versus.

Jesudabai widow of Jethanand Deomal Dwarulal Bhagwandas and Shamlal Bhagwandas heir and legal representatives of Jethanand Deomal deceased, the last being a minor by his brother who acted as his next friend in the original proceedings and now Guardian-ad-litem for this appeal — Respondent.
Original Applicants

Appeal No.104 of 1949
in
R.A.Application No.191 of 1948

Jesodabai W/o Late Jethanand Deomal and others residing at Rus Cottage, Bombay. — Appellants.
Original Applicants

Versus.

S.D.Talati, Parsi adult landlord carrying on business at Bombay — Respondent.
Original Respondent.

Mr.A.S.Davar with Mr. C,G.Vakil and Mr. S.G.Vakil for Appellant in Appeals Nos. 101 and 102 of 1949.

Mr.B.S.Rajeja for Respondents in Appeals Nos.101 and 102 of '49

Mr.C.B.Wadhwa for Appellant in Appeal No.104 of 1949

Mr.A.S.Davar for Respondent in Appeal No.104 of 1949.

Coram:- M.D.Lalkaka, Chief Judge,
and Barodawalla Judge.

JUDGMENT.

These three appeals arise out of two Miscellaneous Applications made by two tenants against their landlord for the determination of the standard rent of the respective portions of the premises occupied by them in a bungalow known as Rus Cottage at Versova in Greater Bombay. The learned trial Judge having fixed the standard rent, the landlord has

filed the first two of these appeals on the ground that the contractual rents not being excessive, the same should be fixed as the standard rent of the respective premises; while one of the tenants who occupies the first floor of the bungalow has filed a cross-appeal against the landlord on the ground that the standard rentfixed for his premises should be fixed at a lower figure than the amount fixed by the learned trial Judge.

According to the Applications, the first floor of the bungalow in question, with which Appeals Nos.102 and 104 of 1949 deal, was let to the tenant on 25th September 1947 at Rs.500/- per month, while the ground floor was let in September 1947 to the other tenant at Rs. 250/- per month and Rs.35 per month for hire of certain furniture. From January 1948 the landlord reduced the contractual rent of the ground floor premises to Rs. 200/- per month taking an additional Rs. 6/- per month for sanitary cess, Rs.5/- per month for water charges and Rs.8/- per month for electric light charges. Both the tenants contended that the rent charged was very much in excess of the stanadrd rentandthey, therefore, requested the Court to fix the standard rent under Section 11 of the Bombay Act 57 of 1947.

It is not disputed that no portion of the bungalow was let at any time before 1942, as previously the bungalow was in the occupation of the landlord and his family. In August 1942 the premises in question were requistioned by Government together with certain other bungalows of the owner. At the time of the requistioning no compensation appears to have been fixed as payable to the landlord for the requisitioned premises; but about a year later, i.e. in or about July 1943, the owner agreed to accept Rs.175/- per month for the bunglow in question and requested the Government to make out a seperate agreement for the bungalow putting down the rent at Rs.175/- as evidenced by his letter dated 12th July 1943 addressed to the Additional Deputy Collector. In consequence, an agreement was thereafter made as of the 25th June 1943 between the owner

Submitted with reference to our letter to the the Govt. Pleader and Solicitor to Govt. on p.32-33 ant

2. Replies have been received from both the abov Offices and both have enclosed a copy of the same judgments of the Court of Small Causes, Bombay, on the subject. The judgment on p.41-63 ante has been perused by Office and the remarks in it which have a relevant hearing on the points of information which we want are sidehint in pencil. The letter on p.39-40 and p.65-66 ante give a summary of the whole position.

3. The position briefly is as follows:-

I Oldx residential bldgs.

The practice adopted by Court of Small Causes for the purpose of ascertaining whether the rent is excessive or not is the "Comparative method", that is to say, to ascertain the rent of other premises in the neighbourhood which by reason of their situation, construction and amenities can be regarded as reasonably comparable with the premises in question, and, after making allowance for any differences in area, amenities, etc., to fi the rent of the premises in question the same basis as the rents prevailing in the locality for other similar premises on 1st September '40.

II New residential bldgs.

The method adopted by the Small Causes Court is known as the "Contracter's test". That rent is considered as reasonable which will give the landlord a net return of 4½ % on the value of the land and 6½ % on the cost of the building. To get this net return, the landlord has to deduct from the gross rent the ordinary outgoings and the Municipal rates including the Urban Immoveable Property Tax. Taking all these factors into considerations, a gross return of 8 2/3% on the cost of the blding, and 6% on the value of the land, is considered reasonable for the purposes of

giving the landlord a net return as mentioned above.

4. Attention, is however, invited to HM's minutes of the 30-12-48 on p.11.12 ante, wherein it is stated that the private builders today is reluctuent to come forward chiefly because of the apprehension that the value of his investment would sinkheavily with the fall of prices which may occur in course of time, while the restrictions under the Rent Act remain intact. It is observed that nowhere in the judgment has this particular aspect been considered or taken into account. Inotherwords, the Court does not allow the landlord to make any additional recovery on rent to meet the contigency of his property falling considerably in value during the depression period. New houses built during the past-war period were built at considerably inflated costs. The Standard rent of such houses will no doubt be fixed after taking into account the high cost of construction and cost of land. But what gurantee is there that with the all round fall in prices ~~xxxing~~ during the slaungs, his house will continue to fetch the same high rent fixed as at present. He will then have to either reduce his rent or keep it vacent without a tenant or even perhaps sell out, which again will involve him in a loss since his house during the slugs will certainly not fetch him the price he invested in it during the boom period. It is this further contingency which every landlord, who has built his house during the past-war period, would like to be guarded against, and the Court does not take this into consideration or perhapes this point has not yet occurred to it. Over and above the gross return of 8 2/3% on the cost of the bldg., it seems therefore, that the landlord will have to be allowed another 2% to ensure him against loss in the event of the contingency mentioned above

occuring, which is not at all unlikely having regard to the present economic position in the country. No such additional allowance seems to be recovery on the gross return of .5% allowed by the Court on value of the land, since land values will not depreciate to the same extent.

6. The point mentioned in para 4 above shows the desirability of incorporating in the Act at least the broad principles on which "Standard rent" should be fixed under sec.11 of the Rent Control Act. so that landlords may know from the very begining w what return they may expect on their investment in bldgs. This will induce them to ~~exxxax~~ come forward and build whereas at present they perhaps feel that it will be left entirely to the discretion of the Court to fix the "Standard rent" on a basis which may ~~xxx~~ turn out to be entirely uneconomic to them.

Id/-
25-1-50.

The office not which is based on an important judgment of the Bombay Small Causes Court, explain the procedure adopted by the Court in fixing standard rent. The procedure has also been explained in detail in the judgment copy of which is in the papers.

Standard rent for old Buildings.

The "Comparative method" adopted by the Court is the best that can be adopted in the present circumstances No action is required to be taken in this connection.

Standard Rent for new Buildings.

As shown in the office note, the Court allows a net return of:-

4½ % on the value of ~~land~~ ~~xxxxxxxxxxxxxxxxxxxxxxxxx~~ ~~xxxxxxxx~~ and 6½ % on the value of building. Comparing it with the present return of slightly

over 3% on gilt-edged securities, the Court thinks, that the above net returns cannot be considered unreasonably large or excessive.

2.Considering the risk of heavy depreciation in price of property which is being run by landlords who ~~do~~ build new buildings in present times, I think some inducement in way of higher return than allowed by the Court is necessary. Office has recommended 2% additional return on the value of buildings on this account thus bringing the net return to 7½ % no additional return is deemed necessary in case of land, price of which is not likely to drop much. I agree with the office note but would like to restrict additional to 1%.

3. I do not think it will be possible to laid down any hard and fast rules for fixation of rents by Courts. The factors affecting the rent are so many and so valid that it would be different to incorporate them. in the Act. We may however prescribed some definite net return and prescribe what outgoings should be allowed. The amount to be permitted under each of the outgoings may be assessed by the Courts.

4. If approved we may refer this question to the Special Housing Development Commission. which is considering the steps to be taken to encourage private building construction so as to stimulate provision of housing.

sd/- 25-1

We may await the conclusions of the special development Committee which would deal with the problem on its own.

Pressure on housing especially in Bombay likely to remain so great for the next 10-15 years that the rent bearing capacity of the construction is not likely to fall. There is no way to raise the return on the

capital. Vacancies are to be negligible and that afford a margin.

Id/-

We should not anticipate the findings of the Committee. We may ascertain how long it will take the Committee to complete the work.

Id/-
2.2

S.O. who is the Secretary of the Special Development Committee set up by the Provincial Housing Advisory Committee will be in a position to ans wer HM's query above.

Id/-
3.2.50

The Committee may not be able to submit its report before the end of March 1950.

We may await the report.

Id/-
3.2

Shri Dafery who is a secy to the special Development Committee is being reminded at regular intervals to submit their report to Govt. (on E Br. papers) in order to enable office to take further action on these papers.

Id/-
1.4.50